

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DANIEL R. McMAHAN, et al.,)
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Plaintiffs,)
)
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vs.) Case No. 4:08-CV-406 MLM
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)
FRANKLIN COUNTY ADULT DETENTION)
FACILITY, et al.,)
)
)
Defendants.)

ORDER AND MEMORANDUM

This matter is before the Court upon the application of Daniel R. McMahan and Shawn Scrivens for leave to commence this action without payment of the required filing fee [Doc. #2 and #3].

A. Plaintiff Daniel R. McMahan

Title 28 U.S.C. § 1915(g) provides that a prisoner may not bring a civil action in forma pauperis if “on 3 or more [earlier] occasions, . . . [the prisoner has] brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

Plaintiff Daniel R. McMahan may not seek to bring the instant action in forma pauperis pursuant to 28 U.S.C. § 1915. A review of this Court’s files indicates that this Court has previously dismissed three of plaintiff’s cases as frivolous and/or for failure to state a claim upon which relief may be granted. See McMahan v. Franklin County Sheriff’s Department, No. 4:07-CV-447 TIA (E.D. Mo.); McMahan v. Berliner, No. 4:07-CV-633 TIA (E.D. Mo.); and McMahan v. Franklin County Sheriff’s Department, No. 4:07-CV-1154 CAS (E.D. Mo.). Furthermore, a review of the

complaint indicates that plaintiff Daniel R. McMahan is not under “imminent danger of serious physical injury.” Because said plaintiff has had three or more previous actions dismissed as frivolous and/or for failing to state a claim, he must pay the full \$350 filing fee. See In re Tyler, 110 F.3d 528 (8th Cir. 1997).

B. Plaintiff Shawn Scrivens

Although plaintiff has filed a motion for leave to proceed in forma pauperis, he has not submitted a properly certified copy of his prisoner account statement. Pursuant to 28 U.S.C. § 1915(a)(2), “[a] prisoner seeking to bring a civil action . . . without payment of fees . . . shall submit a certified copy of the trust fund account statement . . . obtained from the appropriate prison official.” Because the plaintiff is within the custody of the Franklin County Adult Detention Facility, he is a prisoner within the meaning of the Act. See 28 U.S.C. § 1915(h). Therefore, the Court will order Scrivens to submit a properly certified copy of his inmate trust fund account statement in order to be granted leave to proceed without payment of the filing fee.

Accordingly,

IT IS HEREBY ORDERED that plaintiff Daniel R. McMahan is **DENIED** leave to commence this action without payment of the statutory filing fee [Doc. #2].

IT IS FURTHER ORDERED that plaintiff Daniel R. McMahan shall have thirty (30) days from the date of this order to pay the \$350 filing fee.

IT IS FURTHER ORDERED that if plaintiff Daniel R. McMahan fails to pay the filing fee within thirty (30) days, the Court will dismiss him, without prejudice, as a party-plaintiff to this action. See Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that plaintiff Shawn Scrivens’ motion for leave to proceed in forma pauperis [Doc. #3] is **HELD IN ABEYANCE**.

IT IS FURTHER ORDERED that plaintiff Shawn Scrivens shall file a certified copy of his inmate trust fund account statement for the six month period immediately preceding the filing of his complaint on March 24, 2008.

IT IS FURTHER ORDERED that if plaintiff Shawn Scrivens fails to submit a certified copy of his inmate trust fund account statement within thirty (30) days, the Court will dismiss this action without prejudice. See Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDER that if plaintiff Shawn Scrivens submits his inmate trust fund account statement within thirty days, the Clerk shall resubmit this action for review under 28 U.S.C. § 1915.

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 7th day of April, 2008.